

A socio-legal analysis of child labour vis-à-vis child rights in India

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Background

Child labour is a global phenomenon. In India it existed in one form or the other such as slaves, domestic servants, etc. since time immemorial. In the recent years it has received considerable attention from Government, social scientists, voluntary organizations, etc. The fact remains that child labour should be abolished because it interferes with the rights of the children hampering their education and health, mental spiritual & social developments which in the ultimate analysis determines the development of the nation as a whole. The various legislation as well as judicial decisions are still unable to prohibit child labour. There is a need therefore, to identify the gap between the law and judicial decisions on the one hand and the real situation of child labour on the other. It is in these perspectives that the present study is made.

The real situation of child labour in India

While opening the pages of history it is noticed that child labour has become a part of socialization process. The skill of the artisan is transmitted from parent to the child. India is predominantly an agricultural country & a land of small industries, trades and crafts. As a natural sequence various skills such as weaving, ploughing, carpentry, pottery, blacksmith, barbery, tanning and cleaning, making of different products from raw materials like coir, leaf, etc. are evolved and the children learnt these skills from their parents and were occupied with these occupations.

The other forms of child labour, which continued in this country, are that the children are engaged as bonded labour, domestic servants and workers in unorganized sectors like shops, hotels, workshops, etc.

On the advent of industrialization, the intensity of the small-scale industries, trade and craft started reducing in India. The children who were engaged as artisans in the home-front tried to seek an employment in industries including hazardous industries. At this stage the worst form of child labour came into existence in the country. At present in India the working children are found in organized, unorganized as well as hazardous sectors. In this regard the remarks of the minister of state for labour Mr. P.A. Sangama need to be mentioned. He remarked that “the beedi industry especially in Karnataka, Andhra Pradesh and Tamil Nadu ; the match industry in Sivakasi and its environs ; the carpet industry in Uttar Pradesh ; the glass factory in Firozabad, Agra ; the diamond cutting and jari industries in Gujarat are all the dubious “benefactors” of labour in the country. It is quite noteworthy to mention here that the coastal States of the country engage children to make coir products to a large extent.

It is disclosed by the UNESCO representative in India in a seminar on “Elimination of Child Labour” on 22nd February 1997 that out of 375 billion labour in the world, India has 70.36 billion which continue to grow at the rate of 4% annually.¹ ILO has also pointed out that every fourth child in the age of 5-15 years in India is employed.²

In true sense it is difficult to put exactly the magnitude of child labour in India because of predominance of unorganized sectors.

Problems

In spite of several legislation & judicial decisions the child labour continues unabated in India. This in consequence has interfered with the rights of the children namely right to education; physical health; mental, spiritual, moral & social development.

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This in the ultimate has resulted in the impediment of the development of the nation. There is a need therefore to pinpoint the causes of child labour in order to pave the way towards the total prohibition of the same from the country.

The Causation

Poverty is considered as the primary factor that leads to child labour. The effect of this situation is that child labour in turn becomes the cause of poverty. The reason is the use of such labour at its lowest productivity quite often stops the more productive power at the adulthood which means inefficient and insufficient utilization of labour power which ultimately results in high amount of economic loss to the country.

The unemployment problem of the country is viewed as another cause of child labour. Incidentally child labour also becomes the cause of unemployment, because if five million children are in servitude this will imply that five million people are unemployed adults. Thus it is impossible to bring down unemployment without curbing child labour as the job opportunities which are created every year are preferably given to children because they form cheapest source of human labour.

Population growth is also taken as one of the causes of child labour. As a reverse trend it is seen that child labour becomes the cause of population rise because the poor families consider children as hands to work. Thus the children become an incentive for large families.

Another cause of child labour is illiteracy. It is observed that child labour also becomes a cause of illiteracy. For example, in the areas where job opportunities for children are more, in those areas the dropouts in the school are also more. Thus the level of illiteracy cannot be lowered without eradicating child labour from the land.

Thus the factors like poverty, unemployment, population growth and illiteracy lead to child labour and in effect child labor becomes the cause of the said factors and it is a vicious circle.

The employers prefer children for work because the later can be made to work for longer hours at lower wages without any unionism which makes the former profitable.

The parents feel that diverting the children from work place means loss of income to the family and sending the children to the school shall entail additional expenditure.

Children are inclined to work because the poor parents are not able to afford for purchase of study materials and pocket money.

The transmission of artisan skill in the home front from parent to the children is an intrinsic part of socialization process in India.

There is a lack of political conscience to root out child labour and the emphasis is more on regulation than prohibition except in hazardous sectors, however.

The response of general conscience & consciousness towards this most vulnerable section of the society child labour is highly unsatisfactory.

The Law

The Constitution of India

- Article 24 : “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”
- Article (39(e)): “The health, strength of workers, men and women, the under age of children are not abused and that the citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength.”

- Article 39(f): “That childhood and youth are protected against exploitation and against moral and material abandonment.”
- Article 15(3) empowers the State to make special provisions for children.
- Article 23 in general prohibits traffic in human beings and forced labour.

The other legislation

- The Inland Steam Vessels Act, 1917
- The Children (Pledging of Labour) Act, 1933
- The Employment of Children Act, 1938
- The Minimum Wages Act, 1948
- The Plantations Labour Act, 1951
- The Mines Act, 1952
- The Merchant Shipping Act, 1958
- The Motor Transport Workers Act, 1951
- The Apprentice Act, 1961
- The Atomic Energy Act, 1962
- The Beedi & Cigar Workers (conditions of Employment) Act, 1966
- Radiation Protection Rules, 1971
- The Shops and Establishment Act
- The Child Labour (Prohibition and Regulation) Act, 1986

The issues which are mainly highlighted in the aforesaid legislation are as follows :

- The minimum age for employment of children.
- Maximum hours of work prohibiting the night work.
- Prohibition of certain types of work for children.
- Health & safety of working children.

Provisions of Child Labour (Prohibition and Regulation) Act, 1986

- The Act is in four parts and aims to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in other employments.
- “child” means a person who has not completed his fourteen years of age.
- The Act provides for setting up “Child Labour Technical Advisory Committee” for the purpose of addition of occupations and processes to regulate child labour.

The Act lays down that no child will be allowed to work for more than six hours per day with a rest period of one hour after their hours of work. Once a week he will be given a holiday.

No child will be allowed to work between 7 pm to 8 a.m. and no overtime will be permitted.

The Act makes provision that Govt. can make rules for the health and safety of working children.

The penalty for violation of the Act will range from three months to one year of imprisonment or with a fine of Rs. 10,000/- to Rs. 20,000/- or with both. The person will be liable for punishment under clauses given in section 14 (1&2) and not under any other previous Acts.

Any person, police officer or an inspector can file a complaint of an offence under this Act in any court of competent jurisdiction.

Part-A of the Schedule contains a list of 'occupations' and Part-B contains a list of 'processes' in which employment of children are prohibited and as such in other occupations and processes the child labour is only regulated,

The Schedule

Part – A – Occupations : (Sec-3)

- Transport of passengers, goods or mails by railway.
- Cinder picking, clearing of an ash-pit or building operation in the railway premises.
- Work in catering establishment at a railway station involving the movement of a vendor or any other employee of the establishment from one platform to another or in or out of a moving train.
- Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines and.
- A port authority within the limits of port.

Diving

The Schedule: Part – B

Bidi making-carpet weaving-cement manufacture including bagging of cement-cloth printing, dyeing and weaving-manufacture of matches, explosives and fire works-mica cutting and splitting-shellac manufacture-soap manufacture-tanning-wool cleaning-building and construction industry.

The judicial trend

The Indian judiciary particularly the apex court is very much poised against the forced labour and employment of children. But still the judiciary is not hopeful of total prohibition of child labour.

The Supreme Court in the case of Francis Coralie v. Union Territory of Delhi³ has emphasized that the right to life mentioned in Article 21 of Indian Constitution includes the right to live with human dignity. The ambit of this article can be expanded to include variety of rights which are necessary for the full development of life. This Article can thus be made applicable for the overall development of a child as well.

In the case of People's Union for Democratic Rights v. Union of India⁴ the Supreme Court observed that it is a clear breach of Article 24 of the Constitution to employ the children below the age of 14 in the construction work. The court has prohibited any kind of violation of Articles, 23 and 24 and has further laid emphasis on observance of fundamental rights by private individuals and spoke strongly against any form of forced labour.

The Supreme Court in the case of Bandhua Mukti Morcha v. The Union of India and others⁵ took into cognizance the employment of children in carpet manufacturing in Mirzapur in Uttar Pradesh. The District magistrate conducted the raids and got released 144 children who were under the forced custody of the owners.

- In the case of Sheela Barse v. The Union of India⁶ under the direction of the Supreme Court the children who were working near furnaces in glass industry under chemical fumes & coal dust were released.
- The Supreme Court in the case of M.C. Mehta v. State of Tamil Nadu⁷ held that employing children in hazardous work is gross violation of sections 3 and 4 of the Minimum Wages Act, 1948; sections 67, 71 and 75 of the Factories Act, 1948 and Articles 24(1) and 45 of the Constitution of India. It was further held that the minimum wage for child labour should be fixed and children can be employed in the process of packing only and not at the place of manufacturing.
- In the case of Salal Hydro Project v. Jammu & Kashmir⁸ the court observed that total prohibition of child labour in any form may not be socially feasible in prevailing socio-economic environment. Article 24 therefore puts only a partial restriction on child labour. The court observed that so long as there is poverty and destitution in this country it will be difficult to eradicate child labour.

Right to education

The abolition of child labour requires introduction of compulsory education. There is a saying any child out of school is a child labour. Compulsory education and child labour laws are inter-linked. Thus Article 45 of the Constitution supplements Article 24.

This right cannot be denied to a citizen by charging higher fee known as capitation fee. The right to education flows directly from right to life under Article 21 of the Constitution and dignity of individual cannot be assured unless it is accompanied by Right to Education. In this connection it is important to mention here that The Right of Children to Free and Compulsory Education Act, 2009 came into existence on 26th Aug. 2009.

According to Article 45 of the Constitution the State shall endeavor to provide within a period of ten years from the commencement of the Constitution free and compulsory education for all children till they complete the age of 14 years. In the case of Mohini Jain v. State of Karnataka⁹ the Supreme Court declared that right to education at all levels is a fundamental right, covered under Article 21 of the Constitution. In a later case of Unikrishnan v. State of Andhra Pradesh¹⁰ the Supreme Court held that primary education means the education upto the age of 14 years is a fundamental right, professional education is not.

Right to physical health and right to mental, moral, spiritual and social development

Child labour and the right to physical health; right to mental, moral, spiritual and social development are quite inter-connected. The former always interferes with the later.

Article 39 of the Constitution entails to protect the health of the children. According to the Supreme Court in the case of Maneka Gandhi v. Union of India¹¹, right to live is not merely confined to physical existence but includes within its ambit the "right to live with dignity". This implies that not only physical health but also the mental, moral, spiritual and social development of the child should be protected. According to the Act of 1986 the Govt. can make rules for the health and safety of working children.

Conclusions & Suggestions

Taking into consideration the causes of child labour vis-à-vis the rights of the children the following gaps are identified between the laws and real situation of child labour in India for the total prohibition of the later.

- The artisan's skills which were being transmitted from parents to the children in the home-front which were the intrinsic part of socialization process should be recognized as part of vocational education.
- A committee should be constituted to identify these traditional artisan's skills and prepare a list accordingly.
- The primary education should be imparted freely and compulsorily upto the age of 18 years and include vocational education to accommodate artisan's skills and Article 21(A) and Article 45 of the Constitution should be amended and the Supreme Court may review its early decisions accordingly. This will arouse interest and develop the skill of the children who will be involved in the artisan's skill process in the home-front and will be interested to go to the school imparting vocational education.
- The definition of the "child" should be changed in the Act of 1986 to eighteen years to conform to the international standard and national requirement.
- The emphasis should be shifted from regulation of child labour to prohibition of the same. Accordingly Article 24 of the Constitution may be amended and Supreme Court may take firm decisions and the Act of 1986 may be totally overhauled.

The Act of 1986 in a spirit of prohibiting the child labour may expand the ambit of the rule regarding health to include moral, mental, spiritual and social development of the children. All other laws relating to population growth, poverty, illiteracy, unemployment and Rights of the children must be integrated with the child labour prohibition law.

- The scope of the Act of 1986 should be extended to include many unorganized sectors including domestic sector.
- The Act should be designed as Child Labour Prohibition Act and the tit-bit laws relating to child labour should be organized into a Child Labour Code.
- There should be separate Ministry, separate Commission & separate Courts to deal with child labour.
- The political as well as social conscience and consciousness must be aroused to reach the target of prohibiting totally the child labour from Indian soil.
- The PIL can be used as a viable instrument to curb the child labour.

Unless and until the aforesaid gaps between the law and real situation of child labour are bridged up the child labour will continue in this country and children will continue to suffer physically, mentally, morally & spiritually which will adversely affect the country's development in the ultimate.

References

1. The Tribune. Chandigarh. July 28, 1997, p.8.
2. Ibid.
3. AIR, 1981, SC, 748.
4. AIR, 1982, SC, 1473.
5. 3 SCC, 1948, 161.
6. 3 SCC, 1986, 596.
7. 1 SCC, 1991, 283.
8. 3 SCC, 1984, 538.
9. 3 SCC, 1992, 666.
10. 1 SCC, 1993, 645.
11. AIR, SC, 1978, 597.